

Juvenile Rules Task Force

State Courts Building, Phoenix

Meeting Minutes: September 27, 2019

Members attending: Hon. Rebecca Berch (Chair), Hon. Mark Armstrong, Barbara Atwood, Beth Beckmann, Beth Beringhaus, Dale Cardy, Kathleen Coughlin, John Gilmore, Magdalena Jorquez, Hon. Joseph Kreamer, Tina Mattison, Donna McQuality, Eric Meaux, William Owsley, Christina Phillis, Hon. Maurice Portley, Hon. Kathleen Quigley, Beth Rosenberg, Denise Smith, Denise Avila Taylor, Hon. Patricia Trebesch, Edward Truman, Hon. Rick Williams (by telephone), Hon. Anna Young

Absent: Maria Christina Fuentes, Kent Volkmer

Guests: Hon. Robert Brutinel, Nancy Rodriguez, Carey Turner, John Rogers, Aaron Nash, Patrick Hansen, Nina Preston, Christina Lawler, Mike Hawk

AOC Staff: Caroline Lutt-Owens, Joseph Kelroy, Mark Meltzer, Angela Pennington, Theresa Barrett

1. Call to order; welcome by the Chief Justice; introductions; review of A.O. No. 2019-74; preliminary matters. The Chair called the first meeting of the Task Force to order at 10:00 a.m. and invited Chief Justice Robert Brutinel to welcome the members.

Chief Justice Brutinel thanked the members for their participation in this Task Force and encouraged them to obtain input from other stakeholders as the project progresses. In recognizing the importance of this Task Force's work to improve the juvenile justice system, he noted that Administrative Order No. 2019-74, which established this Task Force, was the first order he entered after he became Chief Justice.

The Chief Justice also noted that several sets of Arizona procedural rules, including rules of evidence, civil appeals, civil procedure, criminal procedure, protective order procedure, family law, and probate, have been restyled during the last 10 years, and this project will encompass restyling of the current juvenile rules. The juvenile rules were comprehensively restated 20 years ago, and since then, the juvenile justice system has seen a number of changes – such as the establishment of a new Department of Child Safety (“DCS”) and Office of Child Welfare Investigations, reduced use of detention, more alternatives in dependency proceedings, special consideration of dually adjudicated (“cross-over”) youth, specialized juvenile dockets, such as drug and health and wellness courts, and new federal and state legislation. The Chief Justice added that the goal of this project is not merely to restyle the juvenile rules. The goal also includes recommending substantive revisions in response to the many changes in this area of law during the past two decades. The Task Force's objective should be proposing the best

possible set of juvenile rules, and the Chief Justice accordingly confirmed that substantive rule changes would be appropriate.

The Chief Justice briefly mentioned two specific issues. A.O. No. 2019-74 directs the Task Force to consider whether there should be separate rule sets for delinquency and dependency cases. Members should not read this directive as a recommendation for two rule sets, but rather it is an issue they should discuss. He also noted accelerated hearings in termination cases under the current rules. He asked members to suggest provisions in their proposed rules that would balance the due process rights of parents in these cases with the reality that some parents have little or no interest in the case outcomes.

Reflecting on his experience as a juvenile court judge, Chief Justice Brutinel observed that juvenile proceedings can make a significant difference in people's lives, and procedural rules have a substantial impact on court proceedings. Arizona has been a leader in juvenile justice innovations, and he believes the members' work product will further that reputation. He looks forward to seeing the Task Force's recommendations.

The Chair thanked the Chief Justice for his welcoming remarks. She then invited the members, Task Force staff, and meeting guests to introduce themselves and provide descriptions of their current positions and their backgrounds in juvenile law.

The Chair proceeded to review meeting materials, including documents in today's meeting packets as well as other items posted on the Task Force webpage on the Arizona Judicial Branch website. The meeting packets include rules for conducting Task Force business, data summaries, summaries of the Family First Prevention Services Act ("FFPSA"), and restyling materials. Bryan's Garner's *Guidelines for Drafting and Editing Court Rules* were posted on the webpage. Also posted were a rule petition and Order in R-19-0037, which Ms. Preston will discuss later; amended rule petition No. R-00-0004 (a 2000 petition that proposed a restatement of the juvenile rules); Judge Armstrong's compendium of Arizona opinions on juvenile proceedings; and a 2007 Division Two opinion, *John M. v ADES*, concerning ineffective assistance of counsel in termination cases. Staff also provided members with a 200-page spiral-bound binder that contains staff's initial draft restyling of the current juvenile rules. The Chair encouraged members to retain today's printed materials for future reference.

The Chair advised that Task Force meetings are open to the public, and each meeting would include a call to the public. She reviewed the requirements of A.O. No. 2019-74, and specifically noted that the Task Force must file its rule petition by January 10, 2021. The Order's requirement that the Task Force "seek input from various interested persons and entities" will require the Task Force to have a complete draft of proposed rules at least a few months before the filing date. Because there are currently 116 juvenile rules, the timeline to completion will require the members' dedication and diligent effort.

The meeting materials included a single-page sample of Rules for Conducting Business for a previous Task Force. The Chair reviewed these rules, including a provision that members provide staff 24-hours' notice of an intent to use a proxy for a Task Force meeting. These rules require the members' approval.

Motion: A member moved to approve these Rules for Conducting Business, with its title changed to the Juvenile Rules Task Force. The motion received a second and it passed unanimously. **JRTF: 01**

2. Rules restyling principles; introduction to SharePoint. The Chair then invited Supreme Court staff attorney John Rogers, who participated in previous rule restyling projects, to introduce the principles of restyling. Mr. Rogers began by noting that the key to restyling is good writing. Good writing will improve the rules' clarity. Restyling also uses terminology consistently and improves the rules' organization, both of which make the rules easier to comprehend. Some rules are not clearly written. Mr. Rogers noted that over the years, rules have grown in complexity, and they became harder to find and more difficult to understand. He compared the 1977 volume of the Arizona Rules of Court with the 2017 volume. The latter is nearly double the length of the former. The 2017 volume also used smaller font on larger pages, and had a double rather than a single column, to accommodate more text. Recent Arizona restylings have utilized good writing and reorganization to simplify many of these formerly complex rules.

Bryan Garner's *Guidelines* demonstrate a variety of techniques for accomplishing these restyling goals. Mr. Rogers and staff also prepared materials that are in the meeting packet, which summarize restyling principles and provide examples on how to apply them to the current juvenile rules. Mr. Rogers explained the principles and provided examples, which included the following:

- Improving the formatting, which includes the generous use of subparts and subheadings
- Breaking-up or simplifying unduly long sentences
- Avoiding the use of ambiguous terms (including the word "shall")
- Avoiding the use of redundant terms (e.g., "the court may in its discretion")
- Avoiding the use of archaic terms
- Using simpler words (e.g., use "later" rather than "subsequently") and proper word choice
- Minimizing the use of "of" phrases (e.g., use "superior court clerk" rather than "clerk of the superior court")
- Minimizing the use of "by" phrases (e.g., say "unless the court orders otherwise" rather than "unless otherwise ordered by the court")
- Using the active voice

- Deleting outdated comments or comments that repeat or contradict a rule, relocating substantive provisions in the current comments into the body of the restyled rules, eliminating “applicability” notes, and formatting comments uniformly

On the last point, Judge Armstrong noted that because the Court has adopted comments that appear in the rules, it is not necessary to refer to a comment as a “State Bar Comment” or a “Committee Comment.” The template for comments in the restyled juvenile rules should simply be, “Comment to 2022 Amendment.”

Mr. Rogers’ presentation led to Ms. Pennington’s introductory explanation of SharePoint, which members will be utilizing for their rule revisions. Ms. Pennington advised members that she had recently sent them a link to the SharePoint site for this project. Members should click on that link, accept her invitation, and bookmark the SharePoint page to easily return to it. A SharePoint folder will contain each juvenile rule. Revisions should be done in the “desktop” application.

The Chair thanked Mr. Rogers and Ms. Pennington for their presentations.

3. Workgroups. The Chair has divided the 116 current juvenile rules by subject matter into 4 groups. Each workgroup has been assigned one group of rules for discussion, review, and revision. The Chair assigned members to a workgroup based on their areas of expertise, if possible, and to promote geographic diversity. Each workgroup has a designated leader. Workgroup 1, which will be led by Judge Kreamer, has the general rule provisions, and rules on emancipation and appeals. Workgroup 2 will be led by Ms. Phillis; Workgroup 2 has the delinquency rules. Judge Quigley will lead Workgroup 3, which has the dependency rules. Workgroup 4, which has the rules on guardianships, terminations, and adoptions, will be led by Professor Atwood. The Chair requested workgroups to meet at least once between each Task Force meeting, and to provide its work product to staff at least a week before Task Force meetings. Staff provided each member with a list of their workgroup assignments. The Chair noted that Mark Meltzer would like to attend every workgroup meeting; he is a resource for questions and restyling conventions, and he monitors the progress of the workgroups, thereby assisting the Chair. Each workgroup should have a scribe who makes edits in SharePoint, and Mark has agreed to serve as the designated scribe.

The meeting materials included a set of guidelines for the workgroups. Each workgroup should prepare 3 or 4 rules for discussion at upcoming Task Force meetings and decide which member will present each rule. A member can attend meetings of another workgroup. The Chair added that the Task Force rule petition should present recommendations pursuant to the members’ consensus, but it also can express areas of disagreement and minority viewpoints.

4. Discussion of preliminary issues. Today's meeting agenda noted several issues for preliminary discussion.

(a) *Should the delinquency and dependency rules be separate, standalone rule sets?* A.O. No. 2019-74 directed the Task Force to consider this issue. At present, the members preferred to maintain the delinquency and dependency rules in a single, combined set. Many judges and attorneys have cases in both areas, and it's easier for them to refer to a single set of rules. Moreover, a single set of rules facilitates those who work on cases involving cross-over youth. Rules on subjects such as appeals are common to both case types, and separate rule sets could require duplication of these provisions. Another member recommended keeping the rules in a single set because they traditionally have been combined and separating them now might be time-consuming and have only marginal benefit. The manner of integrating new provisions of the Juvenile Justice Reform Act might also be a consideration. No one offered a cogent reason for having separate sets of rules, and the Chair indicated, at least for the time being, that the Task Force will proceed with a single set of rules.

(b) *What is the relationship between the juvenile rules and other rule sets (e.g., civil, criminal, and family rules)?* Members discussed whether other rules could be cross-referenced in the juvenile rules, or if the substance of those other rules should be incorporated in the juvenile rules. One member preferred incorporating substantive provisions to customize the juvenile rules for juvenile proceedings. But another member observed that if that was done, a change to a corresponding rule in another set might require amendment of a juvenile rule. Another member noted that the juvenile rules incorporate more than a dozen ARCAP rules by reference, which is efficient and keeps the juvenile rules from becoming lengthier and unwieldy. Members reached no consensus on this issue today and they might revisit it later.

(c) *Who are the anticipated users of the juvenile rules?* Members believe most users of these rules will be law trained, especially compared with other rule sets, such as the family rules where many users are self-represented litigants. However, non-law-trained individuals might be required to use, or might receive, some juvenile forms, and anecdotally, self-represented litigants occasionally file appellate petitions for review. The Task Force will need to be mindful of the needs of non-law-trained stakeholders.

(d) *Can the Task Force propose substantive changes to the rules?* The meeting agenda was prepared in advance and in anticipation of a discussion of this issue. However, the Chief Justice addressed this issue during his remarks at the beginning of the meeting. See section 1 of these minutes.

5. FFPSA and R-19-0037. The Chair requested Judge Portley and Ms. Preston, respectively, to summarize these two topics.

Judge Portley noted that the FFPSA offers each state a two-year window for implementing provisions of this federal legislation; Arizona will do so toward the end of that window, in October 2021. The director of the Arizona Department of Child Safety is having an ongoing dialogue with the Legislature concerning implementation.

The FFPSA impacts a variety of child placement, treatment, and funding matters. Placements include Qualified Residential Treatment Programs (“QRTPs”), which have timeliness and other significant requirements detailed in Section 50742 of the federal legislation. Another portion of the FFPSA deals with judicial, staff, and attorney training on the new requirements, while another portion requires states to use an electronic interstate case management system for exchanging information and expediting interstate placements. Other sections concern the Chafee Foster Care Independence Programs to support youth who are aging out of foster care, and which encourage the use of transition services and expanding available supports.

Judge Portley noted that Arizona court rules concerning the FFPSA requirements should be effective by October 2021. Because the Task Force’s 2021 proposed rules would customarily become effective on January 1, 2022, Judge Armstrong raised a possible need to adopt Arizona rule provisions pertinent to the FFPSA on an emergency basis.

Ms. Preston advised that rule petition R-19-0037 was prompted by recent Arizona legislation that became effective on August 27, 2019. The Court adopted rules proposed by that petition on an emergency basis, to be concurrent with the legislation’s effective date. These amendments to Rules 47.1 and 79 concern the extended foster care program, which is designed to assist older children in making a successful transition to adulthood. Ms. Preston summarized the amendments, including hearing requirements and expedited hearings under certain circumstances. She noted that the rule amendments were written in the current style and were not restyled. She added that the rules are open for public comment until October 7, 2019.

The Chair thanked Judge Portley and Ms. Preston for their updates.

6. Roadmap. The meeting materials included a schedule of Task Force meeting dates through December 2020. The Chair envisions 14 meetings, including today’s meeting, during that period. There are uniform intervals between these meetings. Although each member might not be able to attend every meeting, the Chair would like the members to calendar these dates. The Chair would like the Task Force to review at least 10 rules during each of the upcoming meetings. The next meeting is set for **Friday, November 8, 2019**, beginning at **10:00 a.m.** in **Room 345**.

7. Call to the public. Patrick Christian Hansen responded to a call to the public midway through the meeting, and he offered his comments to the members. There was no response to a second call to the public before adjournment.

8. **Concluding remarks; adjourn.** The Chair thanked the members for their service on this Task Force and expressed her confidence that their work would greatly improve the juvenile rules.

The meeting adjourned at 1:10 p.m.